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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 LADARIOUS DOWNS,

12 Plaintiff,

13 v.

14 LOS ANGELES SHERIFF'S
15 DEPARTMENT, et al.,

16 Defendants.
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Case No. 2:23-cv-02271-PA (PVC)

**ORDER ACCEPTING FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE**

19 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Second Amended
20 Complaint, the records herein, and the Report and Recommendation of the United
21 States Magistrate Judge ("Report"). Further, the Court has engaged in a *de novo*
22 review of those portions of the Report to which objections have been made.

23 The Report recommends dismissal of Plaintiff's Second Amended Complaint
24 with leave to file a Third Amended Complaint that is limited to four claims. (ECF
25 No. 25.) For the following reasons, Plaintiff's Objections to the Report (ECF No.
26 28) do not warrant a change to the Report's findings or recommendation.

27 Plaintiff objects that he has a cognizable retaliation claim. (ECF No. 28 at 3-
28 4.) As the Report found, however, Plaintiff's has not provided enough allegations

1 to give rise to a plausible claim of retaliation. (ECF No. 25 at 17.) Plaintiff's
2 objection does not overcome this finding.

3 Plaintiff objects that he has a cognizable claim of denial of access to the
4 courts, based on seizure of his legal materials. (ECF No. 28 at 4.) As the Report
5 found, however, to the extent this claim implicated Plaintiff's ability to mount a
6 viable criminal defense, it likely is barred by *Heck v. Humphrey*, 512 U.S. 477,
7 486-87 (1994). (ECF No. 25 at 18.) Plaintiff objects that his claim implicates,
8 instead, his criminal appeal and civil rights actions. (ECF No. 28 at 4.) This
9 objection does not overcome the Magistrate Judge's warning to Plaintiff that he
10 must identify a "(1) a nonfrivolous underlying claim that was allegedly
11 compromised 'to show that the "arguable" nature of the claim is more than
12 hope'; (2) the official acts that frustrated the litigation of that underlying claim; and
13 (3) a 'remedy available under the access claim and presently unique to it' that could
14 not be awarded by bringing a separate action on an existing claim." (ECF No. 18 at
15 17 (quoting *Christopher v. Harbury*, 536 U.S. 403, 416 (2002).) Plaintiff has not
16 provided such allegations.

17 Plaintiff objects that, for his state law claims, he complied with the
18 administrative exhaustion requirement of the California Government Claims Act
19 ("CGCA"). (ECF No. 28 at 5.) This objection does not overcome the Report's
20 finding that, "[e]ven assuming that the claims were submitted to the proper entity,
21 Plaintiff does not describe the claims' substance, so it is not possible on this record
22 to determine whether the claims alleged are fairly encompassed by his CGCA
23 submission, or whether they included a demand for a sum certain." (ECF No. 25 at
24 28.)


25 Plaintiff objects that he has a cognizable claim for conspiracy. (ECF No. 28
26 at 5-6.) To the contrary, as the Report found, "Plaintiff does not allege that there
27 was an agreement or meeting of the minds to violate his constitutional rights."
28 (ECF No. 25 at 26.)

1 In sum, Plaintiff's objections are overruled.

2 IT IS ORDERED that (1) the Report and Recommendation is accepted and
3 approved; and (2) the Second Amended Complaint is dismissed with leave to file a
4 Third Amended Complaint that is limited to the four claims identified in the Report.

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6 DATED: June 18, 2024

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9 PERCY ANDERSON
10 UNITED STATES DISTRICT JUDGE
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